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County powers limited in water wars

By LISA J. WOLF - Correspondent

EUREKA - Counties may object to the transfer of water outside the borders of their basins but the state has final say over such exports.

That was the opinion of author and water rights expert Michael D. Buschelman, who, along with State Water Engineer Hugh Ricci, explained Nevada water law and answered questions for a capacity crowd Friday at a seminar at the Eureka Opera House.

When asked whether counties have the ability to limit or prevent the exportation of water from their basins, Buschelman responded, "No, I don't believe they do. They can issue complaints based on financial reasons. They can also protest any of these exportations of the water from the county based on psychological reasons, but the state engineer is going to make the determination as to whether that water can be used in other areas.

"You can always petition a decision of the state engineer," said Buschelman, 'and take the state engineer essentially to court and argue your case before the judge. But the point I want to make here is you have a very small window of time to do that. You basically have a 30-day period of time to appeal that decision."

Buschelman stressed that when it comes to water right ownership, people first must understand that water can be owned separately from the land.

He explained that Nevada is one of 14 states with "appropriative" water law, under which the first appropriator of water for beneficial use gets the right. A water user has a right to a definite amount of water and the water right can be separated from the land, unlike the "riparian" systems of some Eastern states where the water rights generally come with property ownership adjacent to a water source.

Riparian rights remain with the property; not so with appropriative rights.

Congress decided in 1877 that each state could choose its own water right law. Buschelman said the settlement of the West, with dry land and the need to transport water across distances, made the riparian approach impractical.

Prior appropriation began in gold mining camps where gold deposits were often far from the sources of water needed for mining. Nevada water rights grew out of the mining claims of the 1800s with the mottos "first in time, first in right," "use it or lose it" and water rights granted for "beneficial use."

The Nevada Water Eng-ineer's office was created in 1903 and statutes began taking effect in 1905.

"There were quite a bit of water interests," Buschelman noted. "Nevada had a very active mining industry and ranching."

He said there are some vested riparian rights from prior to 1903, but other than that, just because someone has been pumping for 50 or 60 years without a water right title doesn't give them a vested right.

"Water is similar to real property: it can be purchased, rented, sold or leased," Buschelman said, pointing out that in the Reno-Sparks area the value of water tripled in the last year. Water sold last year for \$6,000 to \$7,000 per acre foot but recently went for \$25,000 or more per acre foot and, north of Reno in Lemon Valley, water was auctioned for \$43,000 an acre foot.

Ricci said in conversation after the seminar he likes to visit rural areas "so people can see I'm a real person and that I'm available to answer questions. I'm not going to sit at my desk and send somebody else out to bear the brunt."

Ricci, who earned his degree from the University of Nevada in 1981, has been the water engineer for the past five years.

He said he knows he can't satisfy everybody. The state water engineer has been jokingly referred to as a "700-pound gorilla," Ricci said, "but I really can't emphasize anything more to people than that I have to follow the law."

-- CLOSE WINDOW --